



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

William H. Minor
DLA Piper LLP
500 Eighth Street, NW
Washington, DC 20004

AUG 27 2019

RE: MUR 7508
Whirlpool Corporation

Dear Mr. Minor

On October 12, 2018, the Federal Election Commission notified your client, Whirlpool Corporation, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). Upon further review of the allegations contained in the complaint and information supplied by your client, the Commission, on August 22, 2019, voted to dismiss the matter and close the file. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016.

If you have any questions, please contact Adrienne C. Baranowicz, the attorney assigned to this matter, at (202) 694-1573.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Y. Tran".

Lynn Y. Tran
Assistant General Counsel

Enclosure:
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**
3

4 **RESPONDENTS:** Friends of Sherrod Brown and Judith Zamore
5 in her official capacity as treasurer
6 Whirlpool Corporation

MUR 7508

7 **I. INTRODUCTION**

8 This matter was generated by a complaint filed with the Federal Election Commission
9 ("Commission") by Robert Secaur. *See* 52 U.S.C. §30109(a)(1). The Complaint in this matter
10 alleges that Friends of Sherrod Brown and Judith Zamore in her official capacity as treasurer (the
11 "Committee") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and
12 Commission regulations by accepting a prohibited in-kind corporate contribution from Whirlpool
13 Corporation ("Whirlpool") by using the Whirlpool logo and corporate resources in the form of
14 Whirlpool employees in a Committee campaign advertisement.

15 The Committee and Whirlpool respond by stating that Whirlpool did not provide
16 anything of value to the Committee because the advertisement was filmed on public property,
17 used publicly available footage, and featured employees appearing in their personal capacities on
18 their personal time. Respondents also state that Whirlpool promptly sought and received a
19 statement in the advertisement clarifying that the ad did not amount to an endorsement by
20 Whirlpool.

21 Based on the information in the record, the Commission concludes that the Complaint
22 does not indicate that Whirlpool made, and the Committee accepted, a prohibited corporate
23 contribution. Accordingly, the Commission dismisses the allegations that Whirlpool and Friends
24 of Sherrod Brown and Judith Zamore in her official capacity as treasurer violated
25 52 U.S.C. § 30118(a) by making or receiving a prohibited corporate contribution.

II. FACTUAL BACKGROUND

Sherrod Brown is the senior U.S. Senator from Ohio, and was a candidate for re-election in 2018.¹ Whirlpool is a global corporation with a presence in Ohio, employing approximately 10,000 individuals at five manufacturing facilities in Ohio.² On September 25, 2018, the Committee released a campaign advertisement on YouTube entitled “Disheveled” that features several individuals, whom Whirlpool has confirmed are employees, wearing Whirlpool-branded clothing and reading press quotations concerning Brown’s appearance.³ The individuals are then shown together in front of a Whirlpool sign and one employee states, “We make washing machines and Sherrod Brown looks great to us.”⁴ Next, the advertisement overlays quotes concerning Brown’s efforts for Whirlpool workers with Whirlpool factory footage.⁵ At the end of the advertisement, Brown is shown standing on a sidewalk in front of a Whirlpool sign while the employees who had been featured earlier in the advertisement walk on the sidewalk behind him, compliment his appearance, and give him a “thumbs up.”⁶

Beginning on the day after the advertisement was first released, on September 26, 2018, the advertisement began to include the statement: “THIS AD DOES NOT CONSTITUTE AN ENDORSEMENT OF WHIRLPOOL CORPORATION.”⁷ On September 27, 2018, several Ohio

¹ See Compl. at 1 (Oct. 5, 2018).

² Whirlpool Resp. at 1 (Dec. 6, 2018).

³ Committee Resp. at 2 n. 4 (Dec. 3, 2018) (citing Friends of Sherrod Brown, *Disheveled*, YOUTUBE (Sept. 26, 2018), <https://www.youtube.com/watch?v=AoKgb-jV@jU>) (“Disheveled Advertisement”).

⁴ *Id.*

⁵ Committee Resp. at 2.

⁶ *Disheveled Advertisement*.

⁷ *Id.* at 0:05.

1 news outlets published stories concerning Whirlpool's requests that Brown alter the
2 advertisement, and quoted Whirlpool's statement that "Whirlpool Corporation does not endorse
3 candidates running for political office."⁸

4 The Complaint asserts that the Committee's advertisement was intended to imply that
5 Whirlpool endorsed and supported Brown's campaign.⁹ The Complaint further argues that the
6 Committee's addition of a statement indicating that Whirlpool was not endorsing Brown does
7 not diminish the value that Whirlpool allegedly conveyed to the Committee through the use of
8 Whirlpool trademarks that remained in the advertisement.¹⁰ The Complaint alleges that, as a
9 result, the Committee accepted a prohibited corporate contribution from Whirlpool through the
10 use of the company name and logo in its ad.¹¹

11 In its Response, the Committee states that Whirlpool did not make any contributions to
12 the advertisement and contends that the employees filmed the advertisement on their personal
13 time, and did so of their own volition.¹² The Committee's Response also states that the
14 advertisement was filmed on public property and all factory footage used was obtained from
15 publicly available YouTube videos.¹³ The Committee contends that filming the advertisement
16 solely entailed activity that the Commission has previously found to be acceptable or that it has

⁸ See Compl. at 1 (citing Will Garbe, *Whirlpool asks Sen. Sherrod Brown to Change New Ad*, WHIO-TV7, Sept. 27, 2018, <https://www.whio.com/news/local-govt--politics/whirlpool-asks-sen-sherrod-brown-change-new/ZjXr8jOfmptb240Case7EN/>).

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ *See id.*

¹² Committee's Resp. at 2.

¹³ *Id.*

1 declined to regulate.¹⁴ Finally, the Committee asserts that the Complaint's reliance on Advisory
2 Opinion 2007-10 is misplaced because the Committee did not use corporate logos in order to
3 facilitate contributions.¹⁵

4 Similarly, in its Response, Whirlpool asserts that it "in no way offered or allowed Friends
5 of Sherrod Brown to use the Whirlpool name and logo."¹⁶ Whirlpool states that, consistent with
6 its policies, it refused to allow the Committee to film on Whirlpool's private property, that the
7 Whirlpool building logo is visible from public property, and that any Whirlpool employees who
8 appear in the advertisement did so in their individual capacities.¹⁷ Whirlpool also asserts that the
9 employees chose the attire they wore to film the ad.¹⁸ Whirlpool argues that because it did not
10 provide anything to the Committee, there was no corporate contribution.¹⁹ Like the Committee,
11 Whirlpool argues that the Complaint's reliance on Advisory Opinion 2007-10 is inapposite,
12 claiming that other advisory opinions more appropriately address the employees' participation in
13 the advertisement.²⁰ Finally, Whirlpool notes that it took steps to clarify that Whirlpool had not
14 endorsed Brown by demanding that the Committee insert a statement in its advertisement that

¹⁴ *Id.* at 2-4.

¹⁵ *Id.* at 5. The Complaint relies on an advisory opinion in which the Commission did not approve a committee's request to "display the corporate names, trademarks, or service marks to increase participation in [a federal committee] fundraiser." Advisory Op. 2007-10 at 2 (Reyes) ("AO 2007-10") (Aug. 21, 2007). The Committee contends that the Complaint's reliance on the advisory opinion is "misplaced" because the advisory opinion focused on the use of corporate resources to facilitate contributions. Committee's Resp. at 5.

¹⁶ Whirlpool Resp. at 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 3.

²⁰ *Id.* (citing Advisory Op. 1984-43 (Brunswick Corporation) ("AO 1984-43") (approving proposal for corporate employee to appear in a campaign advertisement provided that the employee volunteer his or her time); Advisory Op. 1978-77 (Aspin) ("AO 1978-77") (finding that identification of a corporate officer by his or her corporate position in a campaign advertisement would not constitute a corporate contribution)).

1 Whirlpool was not endorsing Sherrod Brown and by making statements to the press confirming
2 that there had been no endorsement.²¹

3 III. LEGAL ANALYSIS

4 The Act and Commission regulations define "contribution" as "any gift, subscription,
5 loan, advance, or deposit of money or anything of value made by any person for the purpose of
6 influencing any election for Federal office."²² "Anything of value" includes all in-kind
7 contributions, defined as the provision of any goods or services without charge or at a charge that
8 is less than the usual and normal charge for such goods or services.²³ Corporations are
9 prohibited from making contributions or expenditures to candidates and their authorized
10 committees.²⁴ The Act also prohibits candidates from knowingly accepting or receiving any
11 corporate contribution.²⁵

12 The Commission has previously concluded that the use of endorsers who are identified
13 by their corporate positions in campaign advertisements would not violate the Act provided that
14 the corporate employee volunteers his or her time and the campaign pays for all advertisement
15 expenses.²⁶ Both Whirlpool and the Committee state that all Whirlpool employees who appeared

²¹ *Id.* at 2-3.

²² 52 U.S.C. § 30101(8)(A)(i); *see also id.* § 30118(b)(2) (defining "contribution" to include "any direct or indirect payment, distribution, loan advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section").

²³ 11 C.F.R. § 100.52(d)(1).

²⁴ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

²⁵ 52 U.S.C. § 30118(a).

²⁶ AO 1978-77 (permitting corporate employee to provide volunteer services for campaign radio advertisement in which no corporate or personal funds were used); AO 1984-43 (permitting corporate employee to appear in campaign television advertisement which discussed candidate's support for industry and which was wholly paid for by campaign).

1 in the advertisement at issue appeared on their own time,²⁷ and there does not appear to be any
2 contrary information in the available record.

3 The Commission has also previously determined that a corporation's name, trade name,
4 trademarks, and service marks are things of value owned by the corporation, and that authorizing
5 a committee to use them may constitute an in-kind contribution.²⁸ However, those matters
6 involved authorized uses of trademarks and the Commission has found that the resulting value of
7 in-kind contributions from such use of a corporation's name or mark were likely *de minimis*.²⁹

8 The Whirlpool trademarks are featured prominently in the advertisement at issue and may
9 have had some value, but there is no indication in the record that Whirlpool authorized the
10 Committee to use its name and logo.³⁰ According to Whirlpool, the Whirlpool employees
11 featured in the advertisement selected their Whirlpool-branded attire without input from
12 Whirlpool.³¹ The Whirlpool building logo featured in the advertisement is plainly visible from
13 what appears to be a public street where Brown and the Whirlpool employees can be seen
14 standing outside a fenced facility.³² Indeed, the record indicates that Whirlpool specifically

²⁷ Whirlpool Resp. at 2.

²⁸ Factual and Legal Analysis at 4, MUR 7302 (Tom Campbell for North Dakota, *et al.*) ("F&LA") (citing AO 2007-10; F&LA at 7, MUR 6542 (Mullin for Congress); F&LA at 10-11, MUR 6110 (Obama Victory Fund)).

²⁹ F&LA at 5, MUR 7302; *see also* F&LA at 7, MUR 6542 (dismissing allegations that the committee accepted prohibited in-kind corporate contributions where committee paid for advertisements that featured the name and logo of the candidate's business); MURs 6287, 6288, and 6297 (Liberatore for Congress) (EPS dismissal based on determination that the value of a possible in-kind contribution associated with inclusion of a corporate logo on a campaign mailer was likely *de minimis*).

³⁰ *See* F&LA at 3-4, MUR 7457 (Theresa Gasper for Congress, *et al.*) (finding no reason to believe a violation occurred where a candidate's flyer implied endorsement by five universities but where there was no indication that the universities had actually endorsed the candidate or coordinated with the candidate and the flyer only circulated for 24 hours); MUR 6331 (Gibson, *et al.*) (EPS dismissal noting that *authorized* use of corporate logos could constitute a corporate in-kind contribution).

³¹ Whirlpool Resp. at 2.

³² *See* Disheveled Advertisement at 0:05-0:12, 0:22-0:30.

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1 refused to approve the Committee's request to film on Whirlpool's property and requested that
2 the Committee clarify that the appearance of the Whirlpool logo and the presence of employees
3 in the Committee's ad did not amount to an endorsement by Whirlpool. Given Whirlpool's
4 attempt to alleviate potential confusion concerning the corporation's authorization of the
5 advertisement, and given the Commission's prior decisions to dismiss similar actions, the
6 available record does not support a reasonable inference that Whirlpool made, and the
7 Committee accepted, a prohibited corporate contribution.³³

8 In light of these facts, the Commission dismisses the allegation that Whirlpool
9 Corporation and Friends of Sherrod Brown and Judith Zamore in her official capacity as
10 treasurer violated 52 U.S.C. § 30118(a) and closes the file.

³³ See F&LA at 3-4, MUR 7457. *Cf.*, F&LA at 8, MUR 6218 (Ball4NY, *et al.*) (dismissing claims that a committee accepted corporate contributions by including the names of two corporations in publicity mistakenly and without the corporations' consent).